

DECISION



THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20548

FILE: B-208472

DATE: August 30, 1982

MATTER OF: Hoffman - Whitehead Co.

DIGEST:

1. General Accounting Office has no authority to order withholding of award pending determination of bidder's small business status by Small Business Administration.
2. Agency's failure to notify protester of rejection of its bid is procedural irregularity which does not affect the validity of the award.

Hoffman-Whitehead Co. protests the award of a contract under invitation for bids No. DACA65-82-B-0024 issued by the Norfolk District, Corps of Engineers. Hoffman contends the Corps improperly awarded or proposes to award the contract to a higher bidder despite Hoffman's pending appeal of its size status before the Small Business Administration (SBA) Size Appeals Board. The protester also complains that it was not informed by the agency of the rejection of its bid. For the reasons that follow, the protest is dismissed.

Hoffman states that it was the low bidder on this small business set-aside, but that after a protest by the second low bidder, the Regional SBA Office determined that Hoffman was other than a small business. On June 25, 1982, Hoffman appealed the Regional Office's determination to the SBA Size Appeals Board. Hoffman further states that on July 28, it was informed by the Corps that since 30 days had elapsed without a decision by the Size Appeals Board, the Corps intended to proceed with the award to the second low bidder.

Hoffman argues that it will be irreparably harmed by this action and requests that we order the award withheld until its appeal is decided by the SBA.

The General Accounting Office has no authority to order the withholding of an award. Dauphine Corporation, B-202665, April 14, 1981, 81-1 CPD 284. Moreover, under Defense Acquisition Regulation § 1-703 (b)(3) (iv), where the contracting officer is notified of a size status appeal prior to award, he is only required to suspend procurement action until either receipt of the Size Appeals Board's determination of the size status or expiration of a 30-day period from the date the protest was initially filed with the SBA district office.

Here, although Hoffman's submission does not indicate when the protest regarding Hoffman's size was initially filed, clearly more than 30 days have elapsed since the Regional SBA office made its initial determination. Thus, we have no reason to object to the award being made, if otherwise proper.

Regarding Hoffman's contention that the award would be improper because it had not been notified that its bid had been rejected, an agency's failure to give an unsuccessful bidder notice of the rejection of its bid is a procedural deficiency which does not affect the validity of an otherwise proper award. See Policy Research Incorporated, B-200306, March 5, 1981, 81-1 CPD 172. In any event, the protester's letter states that it was informed by the agency that award was going to be made to another bidder and it certainly should have been clear to the protester that the rejection of its bid was due to its size status.

The protest is dismissed.

Harry R. Van Cleve

Harry R. Van Cleve
Acting General Counsel